

# REPORT OF INVESTIGATION



File Number: 03-0101

Agency: Office of the Commissioner of Insurance

Basis for Investigation: Citizen Complaint

Allegations: Insurance Commissioner's purchase of a vehicle during Governor's moratorium on motor vehicle purchases

Date Opened: June 19, 2003

Investigated By: James E. Sehorn  
Inspector General

James P. Walker  
Deputy Inspector General

Elizabeth Archer  
Deputy Inspector General

Date of Report: February 24, 2004

# **OFFICE OF THE INSPECTOR GENERAL**



**File Number: 03-0101**

## **EXECUTIVE SUMMARY**

On April 26, 2003, a complaint was filed with the Office of the State Inspector General (OIG). The complainant requested that our office investigate the purchase of an automobile by State Insurance Commissioner John Oxendine.

The complaint alleged that Commissioner Oxendine purchased the vehicle in violation of a moratorium on the purchase of new vehicles, and that the vehicle was inappropriately equipped with over \$6,000 in upgrades.

The complainant advised the Inspector General that the same complaint had been filed with the Attorney General of the State of Georgia, Thurbert E. Baker, on April 18, 2003. In a letter dated April 30, 2003, Attorney General Baker advised the complainant that this matter was within the investigative authority of the OIG.

The investigation verified that Policies and Procedures promulgated by the Department of Administrative Services (DOAS), Office of Planning and Budget (OPB) and Governor Roy E. Barnes' "Executive Order" were in place before Commissioner Oxendine purchased the 2003 Ford Crown Victoria. Furthermore, it is not disputed that Commissioner Oxendine first sought DOAS approval to purchase the vehicle and that purchase was denied by DOAS.

In reaching this recommendation, the Inspector General interviewed Commissioner Oxendine, Commissioner Russell and Director Connell. DOAS and OPB are discussing proposed measures to preclude this situation from occurring in the future. The Office of the Inspector General recommends the following:

- 1) Consideration should be given to whether Commissioner Oxendine should personally reimburse the taxpayers and the State of Georgia for his purchase. It is the view of this office, that Commissioner Oxendine should not have used funds from his budget to purchase this vehicle. If Commissioner Oxendine fails

or refuses to re-pay the State for the vehicle, then the matter should be referred to the Attorney General's office for action as deemed appropriate.

2) In addition, Commissioner Russell should review with the Attorney General his authority as it relates to this issue.

3) DOAS and OPB need to ensure that tighter controls are in place to preclude the use of state funds for the unauthorized purchase and operation of state vehicles. These controls might include modifying the PeopleSoft financial system to identify certain items that require DOAS approval before purchase. The Office of the State Inspector General should conduct periodic reviews of the progress of the development of these controls.



**Report of Investigation**

**File No. 03- 0101**

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## OFFICE OF THE STATE INSPECTOR GENERAL

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FILE 03-0101

### OFFICE OF THE COMMISSIONER OF INSURANCE SUMMARY OF ACTIONS

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#### **BASIS FOR INVESTIGATION**

On April 26, 2003, a complaint was filed with the Office of the State Inspector General (OIG). The complainant requested that the Inspector General investigate the purchase of an automobile by State Insurance Commissioner John Oxendine. The complainant alleged that Commissioner Oxendine purchased the vehicle in violation of a moratorium on the purchase of new vehicles, and that the vehicle was inappropriately equipped with over \$6,000 in upgrades.

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**(EXHIBITS 1 and 2)**

#### **NARRATIVE**

On January 19, 2000, Bill Tomlinson, Director of the Office of Planning and Budget (OPB) and Dana R. Russell, Commissioner of the Department of Administrative Services (DOAS) co-authored a memorandum to all agency heads and fiscal managers regarding state motor vehicles. Director Tomlinson and Commissioner Russell reminded all agency heads that Governor Roy Barnes had initiated a comprehensive review of the State's financial and administrative processes. This review included an evaluation of the State's policies and practices regarding motor vehicle procurement and usage.

Director Tomlinson informed all state agency heads that a moratorium on the purchase of new vehicles was in effect immediately and would remain in effect until mid-summer of 2000. This moratorium included all state agencies and all vehicles except those vehicles used full time for law enforcement purposes. According to the memorandum, OPB would evaluate and approve individual exceptions to the moratorium for the purchase of base model vehicles to replace vehicles with over 100,000 miles. **(EXHIBIT 3)**

On February 29, 2000, Director Tomlinson sent a memorandum to all agency heads and fiscal managers clarifying the Motor Vehicle Moratorium. Director Tomlinson stated in the memorandum that vehicles exempted from the policy were also exempted from the purchasing moratorium. At that time, constitutional officers were not required to seek OPB approval for purchasing vehicles. It was requested that a copy of any vehicle purchase order be sent to OPB for purposes of record keeping. **(EXHIBIT 4)**

On October 17, 2001, pursuant to a request from Governor Barnes, Director Tomlinson sent a third memorandum to all agency heads informing them of the Governor's decision to continue the moratorium on vehicle purchases. According to the memorandum, vehicles driven by a Constitutional Officer were no longer exempted from the moratorium and required OPB approval prior to purchase. This procedure was to remain in effect until rescinded in writing by OPB. Furthermore, all agency heads were to follow the same procedures for requesting approval for agency head vehicles as required for all other vehicles. **(EXHIBIT 5)**

In accordance with Governor Barnes' vehicle moratorium, State Audits and Accounts, DOAS and OPB jointly issued Policy 10, revision 3, titled Rules, Regulations and Procedures Governing the Purchase, Operation and Disposal of Motor Vehicles and Associated Record-keeping. This Rule and Regulation was enacted pursuant to O.C.G.A. §50-19-1, which authorized DOAS to promulgate rules and regulations regarding the purchases of state vehicles. The intent of the policy was to provide guidelines for the cost effective management and operation of the State's passenger-carrying automobiles used by agencies in accomplishing their legally authorized missions. According to the policy:

[A]ll agencies are required to purchase, operate, use, maintain, service, repair and fuel all passenger-carrying automobiles in accordance with statewide contracts established by DOAS. DOAS is authorized to exempt certain state departments, institutions, boards, bureaus, agencies, or organizational units from the mandatory use of such statewide contracts **after** determining that such exemption would be in the best economical or operational interests of the State.

DOAS mandated that it would order all state vehicles. The Regulation stated:

All vehicles must be ordered through DOAS. Prior to ordering any vehicles, agencies must submit the associated procurement documentation to DOAS for certification that the size and optional requirement restrictions of this policy memorandum are being complied with. No vehicle may be ordered without the signature of the appropriate DOAS official on the procurement documentation. **(EXHIBIT 6)**

OPB, DOAS and DOAA also issued Policy 11, entitled "Rules, Regulations and Procedures Governing the Assignment and Use of Motor Vehicles for State

Employees, Vehicle Allowances Provided to State Agency Heads, and Associated Record-keeping.” This regulation addressed, among other issues, the vehicle allowance that was available to state agency heads at the time. Both policies ten (10) and eleven (11) went into effect June 1, 2002. **(EXHIBIT 7 & 8)**

In conjunction with the above stated Rules and Regulations, Director Tomlinson, Commissioner Russell, and State Auditor Russell Hinton issued a joint three page memorandum dated June 1, 2002, regarding Motor Vehicle Policy Revisions.

This memorandum specifically stated the following:

The current Moratorium on Vehicle Purchases is still in effect and is now the responsibility of DOAS. Until notified otherwise by DOAS, all vehicles types are subject to the moratorium and will require DOAS approval prior to purchase. **(EXHIBIT 9)**

### **Governor’s Executive Order**

On June 10, 2002, Governor Barnes published an Executive Order which established DOAS’ authority to purchase supplies, material, and equipment on behalf of the state of Georgia. The Governor’s Executive Order ordered that pursuant to O.C.G.A. sections §50-5-51(2), §50-19-1(b) (1) and §50-19-1(b) (4) the DOAS Commissioner was authorized to do the following:

- 1) establish and enforce standard specifications which shall apply to all supplies, material, and equipment purchased or to be purchased for the use of the state government for any of its departments, institutions, or agencies.
- 2) establish rules and regulations governing the use of passenger or passenger-carrying automobiles purchased by any department, institution, board, bureau, or agency of the state.
- 3) establish policies and regulations governing acquisition, utilization, preventive maintenance, repair, and replacement of all motor vehicles (excluding of Fleet Management for the Department of Administrative Services. **(EXHIBIT 10)**

### **Insurance Commissioner’s Request for Purchase**

On November 13, 2002, Grant Griffin, Commissioner Oxendine’s Director of Purchasing and Supply Division, wrote to Bill Malcolm, DOAS’ Director of Fleet Management, seeking approval to purchase a 2003 Ford Crown Victoria for Commissioner John Oxendine. Griffin told Malcolm that vehicle #408-4501, a 1993 Ford Crown Victoria with over 195,000 needed to be replaced. The vehicle belonged to the Insurance Commissioner’s Arson and Fraud investigator.

According to Griffin, it was the Commissioner's intent to surplus vehicle #408-4501, give the Arson Investigator the 2000 Crown Victoria that was currently assigned to the Insurance Commissioner and give the new automobile to the Commissioner. He advised that the new vehicle would be purchased by Statewide Contract through Southlake Ford at a cost of \$25,322.32. Attached to the letter was a list from Allan Vigil Ford Government Sales, which outlined the options that the Commissioner wanted for the vehicle. **(EXHIBIT 11)**

On November 25, 2002, Commissioner Russell responded to Griffin's letter advising him of severe revenue shortfalls and the associated effects on the state's budget, and asking that Mr. Griffin review his office's fleet inventory and consider redeployment of a vehicle or in the alternative, obtain a vehicle from surplus property to meet their business travel requirements. Commissioner Russell advised Griffin that if that was not possible, the Insurance Commission should consider resubmitting its vehicle purchase request as a base vehicle without options as provided for on the statewide contract.

Furthermore, Commissioner Russell stated that the request to cascade Commissioner Oxendine's vehicle down as a replacement for vehicle #408-4501 **was denied** as Commissioner Oxendine's vehicle was not due for replacement. **(EXHIBIT 12)**

On November 27, 2002, Commissioner Oxendine sent a letter to Commissioner Russell, notifying him of his intention to purchase the 2003 Crown Victoria, with all options. Commissioner Oxendine stated to Commissioner Russell that "pursuant to our conversation, this office is proceeding immediately with the vehicle purchasing plans outlined in the letter from our office to yours dated November 13, 2002." **(EXHIBIT 13)**

On December 2, 2002, Commissioner Oxendine's office used purchase order, #40800-001-0000020231, to purchase a black, with tan leather interior 2003 Ford Crown Victoria for a total price of \$25,689. This price included the following options:

- 1) LX upgrade package for \$3,503
- 2) 6 disc CD with Cassette at \$633
- 3) Traction Control for \$156
- 4) Leather seats for \$708
- 5) Handling Package for \$832 and
- 6) An Electronic Instrument Cluster for \$209. **(EXHIBIT 14)**

### **Interview with DOAS Commissioner Dana Russell**

On July 16, 2003, and August 8, 2003, the OIG interviewed Commissioner Russell concerning the circumstances surrounding the vehicle purchased by Commissioner Oxendine and/or his office. Commissioner Russell stated that during the time of the



purchase, DOAS was responsible for the purchase approval and OPB was responsible for the release of funds.

Commissioner Russell stated that Rules and Regulations 10-3 and 11 were sent to all agency heads outlining the procedures that should be followed when purchasing state motor vehicles. He added that the Executive Order issued by Governor Barnes gave DOAS the responsibility for statewide vehicle purchases.

When asked about the purchase, Commissioner Russell advised that Commissioner Oxendine called him and asked why he had denied his request to purchase the vehicle. Commissioner Russell said that he recalled Commissioner Oxendine comparing himself and his needs to those of Governor Barnes. Commissioner Oxendine asked Commissioner Russell what authority he had over a "Constitutional Officer" to turn down a request to purchase a vehicle. Commissioner Russell stated that he told Commissioner Oxendine that he was unsure as to what his authority was over a "Constitutional Officer." Commissioner Russell said that Commissioner Oxendine then asked, "What would you do if I went ahead and bought the car?" Commissioner Russell said that he told Commissioner Oxendine he could not stop him from buying the car, he did not have enforcement authority, and that he could not do anything. Commissioner Russell recalled that Commissioner Oxendine asked if he should resubmit his request. Commissioner Russell said that he told Commissioner Oxendine that if he resubmitted the request, he would still not approve it. Commissioner Russell stated that Commissioner Oxendine responded, "I am going to buy it." Commissioner Russell subsequently received the November 27, 2002, Oxendine letter.

Commissioner Russell stated that after his conversation with Commissioner Oxendine, he called John Watson, a member of Governor-elect Sonny Perdue's transition team. He asked Mr. Watson what the Governor-elect wanted to do about these types of purchases and explained the situation. According to Commissioner Russell, Mr. Watson inquired as to his practice in this type of situation. Commissioner Russell told him that it was his practice to deny such requests, to which Mr. Watson replied "Deny the request." **(EXHIBIT 15, 16, 17)**

### **Interview with Brenda Purcell, OPB**

On August 25, 2003, the OIG interviewed Brenda Purcell, who is a member of the Planning, Research and Evaluation division at OPB. Ms. Purcell is the author of the state's motor vehicle policy. Ms. Purcell stated that during the moratorium of 2000, all agencies requesting vehicle purchases came through OPB. She stated that on October 17, 2002, OPB sent a memorandum to all agency heads advising them that the moratorium had been expanded to include vehicles driven by Constitutional Officer's. She explained that if DOAS approved a vehicle request, the request was sent to OPB and OPB verified that the requesting agency has sufficient funds in their budget to support the purchase. OPB reviewed the size of the vehicle and the options requested. According to Ms. Purcell, if DOAS denied a vehicle purchase,

DOAS would not forward the request to purchase to OPB. Ms. Purcell stated that if a purchase request was forwarded, after DOAS has denied the purchase, OPB would not consider the request.

Ms. Purcell stated that OPB does not sign off on agency vehicle purchase requests nor can they track agency vehicle purchases. When asked about Commissioner Oxendine's vehicle purchase, Ms. Purcell stated that she did not know how Commissioner Oxendine was able to issue a purchase order for the vehicle.

**(EXHIBIT 18)**

**Interview with Commissioner Oxendine**

On October 9, 2003, the OIG interviewed Commissioner Oxendine regarding the vehicle purchase. Commissioner Oxendine stated that in 2002, his staff told him that his request to purchase a new vehicle had been denied by Commissioner Russell. He called Commissioner Russell and asked why his request had been denied. Commissioner Oxendine said that Commissioner Russell told him that his request did not fall within DOAS's guidelines pursuant to the existing moratorium on vehicle purchases.

Commissioner Oxendine stated that Commissioner Russell told him that he had the money in his budget and that he could do what he wanted with it because he was a Constitutional Officer. Commissioner Oxendine intimated that Commissioner Russell led him to believe that he could go forward with the purchase, even though he had denied the request. Commissioner Oxendine further stated that Commissioner Russell told him that he could not stop him because he was a Constitutional Officer. Commissioner Oxendine stated that Commissioner Russell told him that "If it were him that he would not purchase the vehicle."

Commissioner Oxendine stated that at no point did Commissioner Russell tell him it was illegal or that "he would get in trouble" if he went ahead with the purchase. Commissioner Oxendine claims that he only asked for a "standard Crown Vic." When asked if the standard Crown Victoria was equipped with a 6 disc changer and leather seats, he replied, "I drive the same car that the Governor, Lt. Governor and other officials drive." Commissioner Oxendine stated that this is how it has always been with regard to purchasing vehicles.

Commissioner Oxendine denied knowledge of an Executive Order signed by Governor Barnes giving DOAS the right to establish guidelines and purchase vehicles. He added that he did not read Executive Orders.

Commissioner Oxendine provided the OIG with a copy of O.C.G.A §50-19-6. He said that he relied on this code section, when he purchased the vehicle. The code section states the following:

The various departments, institutions, boards, bureaus, or agencies of the state, except for the Department of Agriculture, which is provided for in Code Section §50-19-3, are authorized, subject to the appropriation of funds for such purposes, to purchase passenger-carrying automobiles and other motor vehicles for the use of officers, officials, and employees in the performance of their official duties. The operation, use, maintenance, service, and repair of passenger-carrying automobiles shall be governed by the rules and regulations, promulgated by the Department of Administrative Services pursuant to Code Section 50-19-1, except as otherwise provided by law.  
**(EXHIBIT 19)**

## **CONCLUSION**

While this case may not involve millions of dollars, it brings to light a systemic problem within state government, which is the lack of controls and cooperation among state officials. Agency heads, whether elected or appointed, are stewards of the State's money and should be ever mindful of that great responsibility. Good government depends upon this fundamental premise, especially in times of budget crises. Commissioner Oxendine's statement, "This is the way it has always been in regards to purchasing vehicles" is no longer acceptable. Failure to adhere to established policies, procedures and regulations should have consequences. It is troubling that Commissioner Russell felt as though he had no recourse against the actions committed by Commissioner Oxendine, especially in light of his statutory authority.

O.C.G.A. §50-19-1 gives DOAS the authority to promulgate rules and regulations governing the acquisition of motor vehicles by state agencies. In an effort to comply with Governor Barnes' request for management and control over state vehicles, DOAS promulgated policy number 10, Rules and Regulations and Procedures Governing the Purchase, Operation and Disposal of Motor Vehicles, which went into effect on June 1, 2002. This regulation sets forth specific procedures applicable to state agencies for ordering vehicles and made it clear that all vehicles had to be ordered through DOAS. This regulation and corresponding memoranda were sent to all agency heads and fiscal managers.

The Executive Order signed by Governor Barnes on June 10, 2002, appears to reinforce DOAS's authority to promulgate rules and regulations regarding the purchase of automobiles. The Executive Order states that all agencies shall strictly comply with all policies, rules, and regulations governing the purchase of passenger-carrying automobiles as set forth by DOAS. It appears that the language of the Executive Order does not revoke the previous regulations promulgated by Commissioner Russell. If anything, it strengthens them.

One can conclude that Commissioner Oxendine understood DOAS's rules and regulations as he initially complied with their terms by seeking DOAS approval for the

purchase of his vehicle. In fact, records reflect that Commissioner Oxendine's office had followed DOAS procedure on fourteen (14) different occasions prior to the November 2002 purchase. **(EXHIBIT 20)** However, with regard to this particular purchase, DOAS denied his request. In clear violation of DOAS rules and regulations, Commissioner Oxendine purchased the vehicle anyway. Given Governor Barnes' Executive Order, which detailed findings of a state audit and asked for restraint regarding the purchase of state vehicles, Commissioner Oxendine's actions were in blatant disregard for established authority. When informed that he would not be allowed to purchase his automobile, his response was in essence, "Try and stop me."

Commissioner Oxendine stated to the OIG that he believed he had the statutory authority to purchase the vehicle. This is an obvious post hoc rationalization. Had he truly believed that he had the authority to purchase the vehicle without DOAS approval, his office would have never sought approval in the first place.

Commissioner Oxendine's vehicle was in good working condition and was purchased with taxpayer funds. Therefore, Commissioner Oxendine's purchase of the 2003 Crown Victoria, with luxury options such as leather seats and a 6 disk CD player was wasteful. As stated, upon reviewing Commissioner Oxendine's request, Commissioner Russell denied the purchase. When Commissioner Oxendine expressed his desire to proceed with the purchase, it appears that Commissioner Russell believed that he was powerless to stop a constitutional officer from making such a purchase. Commissioner Russell should have taken the steps to pursue more aggressive action. At a minimum, Commissioner Russell should have asked the Attorney General whether legal action could have been taken to enforce his rules and regulations and prohibit Commissioner Oxendine's purchase.

Commissioner Oxendine's purchase also directly contradicted the Governor's Executive Order. The intent of the Governor's Executive Order was to preserve funds for the good of the state during a time of severe budget constraints. The Governor also highlighted the fact that a state audit had revealed that the State had failed to properly manage its automobile fleet. Therefore, the Governor ordered that state agencies cease purchasing vehicles, hence the moratorium. All state officials, especially a statewide elected official, should have followed this reasonable request. Purchasing a luxury automobile in the face of such a request was irresponsible.

While there may be established provisions for agency heads with regards to the use of state vehicles, an argument can be made that Commissioner Oxendine does not need a state vehicle. Like most private citizens, Commissioner Oxendine could travel to and from work and to and from official functions in his private vehicle and seek reimbursement for "work miles." In fact, DOAS and OPB allows for an annual vehicle allowance for agency heads to compensate them for the use of their private vehicles for state-related business.

Commissioner Oxendine seemed to justify his purchase on the grounds that the Governor had a similar vehicle. When the State purchases a vehicle for a state

employee or state official it is not a perk. Rather, it should be a necessary purchase to assist the official in the conduct of his official duties. By purchasing the 2003 Ford Crown Victoria in violation of DOAS's Rules and Regulations and in contravention of a reasonable and appropriate Executive Order, Commissioner Oxendine failed the State.

## **RECOMMENDATIONS**

Based on the information obtained during the investigation, the Inspector General recommends the following:

- 1) Consideration should be given to whether Commissioner Oxendine should personally reimburse the taxpayers and the State of Georgia for his purchase. It is the view of this office, that Commissioner Oxendine should not have used funds from his budget to purchase this vehicle. If Commissioner Oxendine fails or refuses to repay the State for the vehicle, then the matter should be referred to the Attorney General's office for action as deemed appropriate.
- 2) In addition, Commissioner Russell should review with the Attorney General his authority as it relates to this issue.
- 3) DOAS and OPB need to ensure that tighter controls are in place to preclude the use of state funds for the unauthorized purchase and operation of state vehicles. These controls might include modifying the PeopleSoft financial system to identify certain items that require DOAS approval before purchase vehicles. The Office of the State Inspector General should conduct periodic reviews of the progress of the development of these controls.

**EXHIBIT LIST****NUMBER****ITEM**

1.                   OIG Form 1 complaint filed April 26, 2003
2.                   Letter dated April 18, 2003, Anderson to Baker and  
Baker's response April 30, 2003
3.                   January 19, 2000 memorandum from Tomlinson and  
Russell to Agency Heads and Fiscal Managers
4.                   February 29, 2000 memorandum from Tomlinson to  
Agency Heads and Fiscal Managers
5.                   October 17, 2001 memorandum from Bill Tomlinson to  
Agency Heads
6.                   Policy Memorandum 10-3, dated June 1, 2002
7.                   Policy Memorandum 11, dated June 1, 2002
8.                   August 30, 2002 memorandum from Bill Tomlinson to  
Agency Heads
9.                   June 1, 2002 memorandum from Bill Tomlinson, Dana  
Russell and Russell Hinton to Agency Heads
10.                  Governor Roy Barnes Executive Order dated June 10,  
2002
11.                  November 13, 2002 letter from Grant Griffin to Bill  
Malcolm
12.                  November 25, 2002 letter from Dana R. Russell to  
Grant Griffin
13.                  November 27, 2002 letter from John W. Oxendine to  
Dana R. Russell

14. Purchase Order 40800-001-0000020231 dated 12/02/2002
15. July 16, 2003 interview of Dana R. Russell
16. August 18, 2003 interview of Dana R. Russell
17. October 17, 2003 interview of John Watson
18. August 25, 2003 interview of Brenda Purcell
19. October 9, 2003 interview of John W. Oxendine
20. List of vehicles requested by the Office of Insurance and Fire Safety Commissioner